



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 97-90**  
**October 31, 2003**

---

## **CONFORMANCE WITH FEDERAL ACQUISITION CIRCULARS 2001-15 AND 2001-14**

**PURPOSE:** This PN revises the NASA FAR Supplement (NFS) to conform to changes made to the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 2001-15 by providing guidance to contracting officers for use of clause alternates to implement environmental management system (EMS) requirements on NASA facilities and removing the requirement for submission of SF 129, Solicitation Mailing List Application. Additional changes are made to conform to the revised definition of "United States" contained in FAC 2001-14 and to update the designated NASA ombudsman.

**BACKGROUND:** Item I of FAC 2001-15 eliminated the SF 129, Solicitation Mailing List Application and the need to maintain paper-based sources of contractor information. As a result, a change to NFS Part 1805 is required. FAC 2001-15, item number V, Leadership in Environmental Management (E.O. 13148), requires insertion of Alternates I or II to FAR clause 52.223-5, Pollution Prevention and Right-to-Know Information, in certain contracts that provide for performance on a Federal facility if an Environmental Management System (EMS) is being implemented. NASA is implementing an EMS. This PN implements FAC 2001-15 item number V by providing guidance on when to use the alternates. FAC 2001-14, clarified the use of the term "United States." NFS section 1825.7001 is amended to remove the phrase "its possessions, and Puerto Rico" since it is no longer necessary based on the definition of "United States" contained in FAR Part 25. Lastly, this PN updates the designated NASA ombudsman.

**ACQUISITIONS AFFECTED BY CHANGES:** New solicitations and contracts.

### **ACTION REQUIRED BY CONTRACTING OFFICERS:**

52.223-5 Pollution Protection and Rights-to-Know Information -- Use appropriate Alternate for facility operations after consultation with center facility environmental office, if necessary.

1852.215-84 Ombudsman -- Use the revised clause in all solicitations and contracts issued on or after October 21, 2003.

**CLAUSE CHANGES:** Clause 1852.215-84 is revised to update the designated NASA ombudsman.

**PARTS AFFECTED:** Changes are made in Parts 1805, 1823, 1825, and 1852.

**REPLACEMENT PAGES:** You may use the enclosed pages to replace Part 1805, Part 1823, 25:3, 25:4, 52:11 through 52:14, 52-91, and 52-92 of the NASA FAR Supplement.

**TYPE OF RULE AND PUBLICATION DATE:** The PN was published as a final rule in the Federal Register (68 FR 62022 - 62023) on October 31, 2003.

**HEADQUARTERS CONTACT:** Celeste Dalton, Code HK, (202) 358-1645, email: Celeste.M.Dalton@nasa.gov.

James A. Balinskas  
Director, Contract Management Division

Enclosures

**DISTRIBUTION:**  
**PN List**

**PART 1805  
PUBLICIZING CONTRACT ACTIONS**

**TABLE OF CONTENTS**

<b>SUBPART</b>	<b>1805.1</b>	<b>DISSEMINATION OF INFORMATION</b>
1805.101		Methods of disseminating information.
<b>SUBPART</b>	<b>1805.2</b>	<b>SYNOPSIS OF PROPOSED CONTRACTS</b>
1805.207		Preparation and transmittal of synopses.
1805.207-70		Synopses of Architect-Engineer Services and Federal Information Processing Resources.
<b>SUBPART</b>	<b>1805.3</b>	<b>SYNOPSIS OF CONTRACT AWARDS</b>
1805.303		Announcement of contract awards.
1805.303-70		NASA Headquarters public announcement.
1805.303-71		Administrator's notice of significant contract actions (ANOSCAs).
<b>SUBPART</b>	<b>1805.4</b>	<b>RELEASE OF INFORMATION</b>
1805.402		General public.
1805.403		Requests from Members of Congress.
<b>SUBPART</b>	<b>1805.5</b>	<b>PAID ADVERTISEMENTS</b>
1805.502		Authority.

**PART 1805  
PUBLICIZING CONTRACT ACTIONS**

**Subpart 1805.1--Dissemination of Information**

**1805.101 Methods of disseminating information.**

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

**Subpart 1805.2--Synopses of Proposed Contracts**

**1805.207 Preparation and transmittal of synopses.**

(a) Synopses shall be transmitted in accordance with 1804.570.

**1805.207-70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.**

(a) *Architect-Engineer Services.*

(1) Each notice publicizing the acquisition of architect-engineer services shall be headed "*C. Architect-Engineer Services.*"

- (2) In addition to meeting the requirements of FAR 5.207(c), the project description shall--
- (i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;
  - (ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;
  - (iii) Describe qualifications or performance data required from architect-engineer firms; and
  - (iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning "Selection of firms for negotiations," the fourth additional consideration listed is changed to read: "(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;" and (b) in the last sentence, "National Aeronautics and Space Administration" is substituted for "Department of Defense."

**(b) Federal Information Processing (FIP) Resources.**

(1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The \_\_\_\_\_ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: \_\_\_\_\_ (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

**Subpart 1805.3--Synopsis of Contract Awards**

**1805.303 Announcement of contract awards.**

(a)(i) In lieu of the \$3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of \$25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of \$25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than \$25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303-70 have been completed.

**1805.303-70 NASA Headquarters public announcement.**

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

- (1) A brief description of the work, including identification of the program and project;
- (2) Identification of the contract action as either a new contract or additional work or services under an existing contract;
- (3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;
- (4) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;
- (5) Name and address (including zip code) of the contractor;
- (6) Principal work performance locations;
- (7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 P.M. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Assistant Administrator for Procurement (Code HS).

**1805.303-71 Administrator's notice of significant contract actions (ANOSCA's).**

(a) In addition to the public announcement requirements described in 1805.303-70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

- (1) Planned contract award for competitive acquisitions of \$25 million or more, including all priced options.
- (2) Planned contract award of non-competitive awards and new work modifications of \$100 million or more, including all priced options.

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b)(1)-(10) of this section to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202-358-4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone of the impending transmission. In accordance with FAR 3.104-5(c), the contracting officer shall mark all pages that include source selection information with the legend "SOURCE SELECTION INFORMATION - SEE FAR 3.104." The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over \$1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) For competitive selections only, provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303-70.

### **Subpart 1805.4--Release of Information**

#### **1805.402 General public.**

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers, and

(ii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

#### **1805.403 Requests from Members of Congress.**

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

**Subpart 1805.5--Paid Advertisements**

**1805.502 Authority.**

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

**PART 1823**  
**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY**  
**TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**TABLE OF CONTENTS**

<b>SUBPART</b>	<b>1823.2</b>	<b>ENERGY AND WATER EFFICIENT AND RENEWABLE ENERGY</b>
1823.203		Energy-efficient products.
1823.270		Federal fleet and transportation efficiency.
1823.271		NASA Solicitation provision and contract clause.
<b>SUBPART</b>	<b>1823.3</b>	<b>HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA</b>
1823.370		Acquisition of potentially hazardous items from or through another Government agency.
<b>SUBPART</b>	<b>1823.4</b>	<b>USE OF RECOVERED MATERIALS</b>
1823.404		Agency affirmative procurement programs.
<b>SUBPART</b>	<b>1823.5</b>	<b>DRUG-FREE WORKPLACE</b>
1823.570		Drug-and alcohol-free workforce.
1823.570-1		Scope.
1823.570-2		Definitions.
1823.570-3		Contract clause.
1823.570-4		Suspension of payments, termination of contract, and debarment and suspension actions.
<b>SUBPART</b>	<b>1823.7</b>	<b>CONTRACTING FOR ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES</b>
1823.703		Policy.
<b>SUBPART</b>	<b>1823.10</b>	<b>FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS</b>
1823.1005	1823.1005	Contract clause.
<b>SUBPART</b>	<b>1823.70</b>	<b>SAFETY AND HEALTH</b>
1823.7001		NASA solicitation provisions and contract clauses.
<b>SUBPART</b>	<b>1823.71</b>	<b>FREQUENCY AUTHORIZATION</b>
1823.7101		Contract clause.
1823.7102		Procedures.



**PART 1823**  
**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY**  
**TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 1823.2--Energy and Water Efficiency and Renewable Energy**

**1823.203 Energy-efficient products.**

Responsibility, policy and procedures for NASA's implementation of FAR 23.203, including cost-effectiveness, are described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices."

**1823.270 Federal fleet and transportation efficiency.**

Responsibility, policy and procedures for NASA's implementation of Executive Order 13149, "Greening the Government through Federal Fleet and Transportation Efficiency", including cost-effectiveness, are described in NPG 6200.1, "NASA Transportation and General Traffic Management."

**1823.271 NASA Solicitation provision and contract clause.**

Insert the clause at 1852.223-76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

**Subpart 1823.3--Hazardous Material Identification  
and Material Safety Data**

**1823.370 Acquisition of potentially hazardous items from or through another Government agency.**

When acquiring supplies or services from or through another Government agency (e.g., see FAR Part 8 and FAR Subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR Subpart 23.3.

**Subpart 1823.4--Use of Recovered Materials**

**1823.404 Agency affirmative procurement programs.**

NASA's affirmative procurement program is described in the Affirmative Procurement Plan for Environmentally Preferable Products (NPG 8830.1).

**Subpart 1823.5--Drug-Free Workplace**

**1823.570 Drug-and alcohol-free workforce.**

**1823.570-1 Scope.**

Sections 1823.570 to 1823.570-4 set forth NASA requirements for mandatory drug and alcohol

testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

**1823.570-2 Definitions.**

As used in this subpart **employee** and **controlled substance** are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570-4 and the clause at 1852.223-74.

**"Employee in a sensitive position"** means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at 1852.246-70. The term also includes any applicant who is interviewed for a position described in this paragraph.

**"Use, in violation of applicable law or Federal regulation, of alcohol"** includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

**1823.570-3 Contract clause.**

The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see FAR Parts 2 and 12).

**1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.**

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223-74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

**Subpart 1823.7--Contracting for Environmentally Preferable Products and Services**

**1823.703 Policy.**

Responsibility, policy and procedures for NASA's implementation of FAR 23.703 is described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices".

**Subpart 1823.10--Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements**

**1823.1005 Contract clause.**

(b) Use the clause with its Alternate I if the contract provides for contractor –

(1) Operation or maintenance of a NASA facility at which NASA has implemented or plans to implement an EMS, including, but not limited to the Jet Propulsion Laboratory and Michoud Assembly Facility; or

(2) Activities and operations –

(ii) The contracting officer and the procurement request initiator shall determine whether the contractor's activities or operations are covered within the EMS, in cooperation with the facility's environmental office, and in accordance with NPG 8553.1, "NASA Environmental Management System (EMS)" paragraph 1.2.c, and the local EMS documented procedures.

(c) Use the clause with its Alternate II whenever Alternate I is used.

**Subpart 1823.70--Safety and Health**

**1823.7001 NASA solicitation provisions and contract clauses.**

(a) The clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in

PROCUREMENT NOTICE (PN) 97-90 REPLACEMENT PAGE

23:6

any resulting contract. Insert the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223-70.

(d)The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless

waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at 1852.223-70, Safety and Health, the contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form).

### **Subpart 1823.71--Frequency Authorization**

#### **1823.7101 Contract clause.**

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

#### **1823.7102 Procedures.**

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.



coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

### **Subpart 1825.10--Additional Foreign Acquisition Regulations**

#### **1825.1001 Waiver of right to examination of records.**

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

#### **1825.1002 Use of foreign currency.**

The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

### **Subpart 1825.11--Solicitation Provisions and Contract Clause**

#### **1825.1101 Acquisition of supplies.**

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225-8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR Subpart 25.9 and 1825.903.

#### **1825.1103 Other provisions and clauses.**

##### **1825.1103-70 Export control.**

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/ EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii).)

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in

furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

### **Subpart 1825.70--Foreign Contract and International Agreement Clearances**

#### **1825.7000 Scope of subpart.**

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

#### **1825.7001 Definition.**

"**Foreign contract acquisition**", as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include --

- (a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States; or
- (b) Contracts with the Canadian Commercial Corporation.

#### **1825.7002 Foreign Contracts.**

(a) Policy. Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves export control issues. An acquisition involves export control issues if it entails --

(1) Importing or exporting goods or technical data from or to a country listed in 22 CFR 126.1(a) or (d) (Subchapter M, the International Traffic in Arms Regulations) (<http://www.pmdtc.org/reference.htm#ITAR>);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which would require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 740, Supplements 1, Country Group D; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

#### **(b) Procedure.**

(1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in paragraph (a) of this section must submit the



**1852.215-77 Preproposal/Pre-bid Conference.**

As prescribed in 1815.209-70(a), insert the following provision:

**PREPROPOSAL/PRE-BID CONFERENCE  
(DECEMBER 1988)**

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

**(End of provision)**

**1852.215-78 Make or Buy Program Requirements.**

As prescribed in 1815.408-70(a), insert the following provision:

**MAKE OR BUY PROGRAM REQUIREMENTS  
(FEBRUARY 1998)**

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.407-2. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort.

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

**(End of provision)**

**1852.215-79 Price Adjustment for "Make-or-Buy" Changes.**

As prescribed in 1815.408-70(b), insert the following clause:

**PRICE ADJUSTMENT FOR "MAKE-OR-BUY" CHANGES  
(DECEMBER 1988)**

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

ITEM DESCRIPTION	MAKE-OR-BUY DETERMINATION

--	--

(End of clause)

### **1852.215-81 Proposal Page Limitations.**

As prescribed in 1815.209-70(d), insert the following provision:

#### **PROPOSAL PAGE LIMITATIONS**

**(FEBRUARY 1998)**

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposal Section (List each volume or section)	Page Limit (Specify limit)

(b) A page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than 12 point type. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If final revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

**(End of provision)**

### **1852.215-84 Ombudsman.**

As prescribed in 1815.7003, insert the following clause:

#### **OMBUDSMAN**

**(OCTOBER 2003)**

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, \_\_\_\_\_ [Insert name, address, telephone number, facsimile number, and e-mail address]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail

james.a.balinskas@nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

**(End of clause)**

**ALTERNATE I  
(JUNE 2000)**

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

**(End of clause)**

**1852.216-73 Estimated Cost and Cost Sharing.**

As prescribed in 1816.307-70(a), insert the following clause:

**ESTIMATED COST AND COST SHARING  
(DECEMBER 1991)**

(a) It is estimated that the total cost of performing the work under this contract will be \$ \_\_\_\_.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than \_\_\_\_ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining \_\_\_\_ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the \_\_\_\_\_ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ \_\_\_\_ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

**(End of clause)**

**1852.216-74 Estimated Cost and Fixed Fee.**

As prescribed in 1816.307-70(b), insert the following clause:

**ESTIMATED COST AND FIXED FEE  
(DECEMBER 1991)**

The estimated cost of this contract is \_\_\_\_ exclusive of the fixed fee of \_\_\_\_ . The total estimated cost and fixed fee is \_\_\_\_ .

**(End of clause)**

**1852.216-75 Payment of Fixed Fee.**

As prescribed in 1816.307-70(c), insert the following clause:

**PAYMENT OF FIXED FEE  
(DECEMBER 1988)**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

**(End of clause)**

**1852.216-76 Award Fee for Service Contracts.**

As prescribed in 1816.406-70(a), insert the following clause:

**AWARD FEE FOR SERVICE CONTRACTS  
(JUNE 2000)**

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6\* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6\* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1)Provisional award fee payments [insert "will" or "will not", as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.